1278.

SUPREME COURT OF THE UNITED STATES.

No. 173.

JONATHAN W. AND THOMAS NESMITH, COMPLAINANTS,

vs.

THOMAS C. SHELDON ET AL.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT UNITED STATES, FOR THE DISTRICT OF MICHIGAN.

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Circuit court of the United States, for the district of Michigan.
In chancery.

JONATHAN W. NESMITH and William Nesmith, complainants,
vs.
THOMAS C. SHELDON, Horace H. Comstock, David French, William E. Peters, James Forton, Atla E. Mather, Henry B. Holbrook, Samuel P. Mead, Francis E. Eldred, Phebe Ann Dean, Cullen Brown, and Charles H. Stewart, defendants.

This was a bill on the equity side of the court to collect from the defendants, as stockholders of the Detroit City Bank, the amount of a claim which had previously been reduced to judgment against said bank, and afterwards against the directors of the same.

The bill alleges that an association of persons was organized by the name of the Detroit City Bank, for banking purposes, under and by virtue of an act of the legislature of the State of Michigan, entitled "an act to organize and regulate banking associations," approved March 15, 1837. That certain persons, naming them, were elected and acted as directors; that the defendants were subscribers to certain shares of stock, and were stockholders of said association; that the association, claiming to have complied with said act of the legislature, and to be a body politic and corporate, commenced doing a business as a banking association, having a president and cashier, and became indebted to the complainants and others, and failed and became insolvent in February, 1839; that the complainants sued said Detroit City Bank for the debt of said bank owing to them, and recovered a judgment against said bank in the circuit court for the county of Wayne, and State of Michigan, on the 25th of May, 1841, which is in full force—not paid or satisfied.

That on the 6th day of July, 1841, the complainants recovered a judgment on their said debt against the directors of said bank in this court, which is in full force, and not paid or satisfied; that execution has been issued upon said judgment against the directors, and returned wholly unsatisfied.

The claim or demand, on which the suits at law were brought, is thus described in the bill of complaint:

"And your orators further show unto your honor, that on the 15th day of September, A. D. 1838, and while said bank was doing a business as a banking institution, said bank, at said city of Detroit, by said Harris, the cashier thereof, made their bill of exchange in writing of that date, and directed the same to Watts Sherman, as cashier of the Albany City Bank, and thereby requested said Sherman to pay to the

order of your orators, by and in the name, style, and firm of J. W. & T. Nesmith, six hundred dollars, nine months after the date thereof, which period has now elapsed. And said Detroit City Bank, by said Harris, their cashier, then and there wrote across the face of said bill of exchange or draft the words, acceptance waived, and thereby waived acceptance thereof, and then and there delivered the same to your orators.

"Which bill of exchange was presented for payment at the Albany City Bank in the city of Albany, in the State of New York, where the same was made payable, on the day the same became due, to wit, on the 18th day of June, A. D. 1839; that the same was not paid, and that the same was then and there duly protested at said Albany City Bank for non-payment; of all which said several premises said Detroit City Bank afterwards, to wit, on the same day and year last aforesaid, and at said city of Detroit, had due notice."

The bill further avers, that in the month of January, A. D. 1840, receivers of the bank were appointed, who took into their charge and custody all the property and effects of the bank, so that the complainants could not reach these by an execution on their judgment against the bank.

The directors, against whom judgment was recovered, were Campbell, Mead, Truax, McReynolds, Eldred, Hallock, Brown, Bissell, and Brooks.

The defendants to this bill are Thomas C. Sheldon, David French, William E. Peters, James Forton, Atla E. Mather, Henry B. Holbrook, Samuel P. Mead, Horace H. Comstock, Francis E. Eldred, and Phœbe Ann Dean, as administratrix of Jerry Dean.

All these, as well as the above named directors, are shown to have been original stockholders of the bank, and to have so continued from its organization till its failure.

In addition to the above, Brown, as receiver, and Stewart, as his attorney, are made parties for the sake of discovery.

The bill seeks to charge the defendants, as stockholders, in their individual capacity, with the payment of said debt of the association in pursuance of the act aforesaid and the amendments thereto—said act giving the right to the legislature to amend or repeal the same.

The defendants put in general demurrers to the bill.

Article 4th, section 1st, of the constitution of the State of Michigan, is as follows: "The legislative power shall be vested in a senate and house of representatives."

Section 2d, of article 12, of said constitution, is as follows: "The legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house."

By the twenty-first section of the amended act, it is declared that "for all debts of such banking association, the directors thereof, if such association shall become insolvent, in the first place shall be liable in their individual capacity to the full amount which such insolvent association may be indebted, and each other stockholder shall thereafter be